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ABSTRACT

California educators have been given broad discretionary powers to control students who misuse drugs or narcotics, and to develop drug education programs. This paper outlines and discusses legislation dealing with disciplinary actions against drug offenders, and delineates school responsibilities for developing and implementing effective drug education programs. (LLR)

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LEGAL POSITION OF SCHOOL PERSONNEL -- DRUGS AND NARCOTICS

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All of us are well aware of the increasing illicit use of drugs and narcotics by our children. We are dismayed over reports from the probation department and the schools detailing not only the great numbers of kids involved in drugs or narcotics violations, but also giving evidence that there is no clear pattern of family background, neighborhood environment or economic status which would serve to assist the schools and other authorities to devise simple and effective programs of rehabilitation or prevention. In short, at this time there is a certain element of bewilderment and confusion about the underlying causes which impel some kids to flee into the world of Fantasmagoria via use of drugs or narcotics. In tandem with this bewilderment and confusion, there is a hesitancy about how to proceed at all levels of government, and among private agencies in the community, to develop programs which will deter the child who has never tried the stuff and rehabilitate the child who has.

Our State Legislature has not miraculously been immunized against this bewilderment, confusion, and hesitancy about youthful drug and narcotics usage. Assembly Concurrent Resolution No. 41 of the 1968 California Legislature candidly describes the quandry our legislators, who, for the most part, are practical and action-oriented men, are in on the subject of drugs, when it states:

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> ...Evidence presented to the Legislature indicates that there does not exist at the present time sufficient knowledge or experience which would allow the Legislature to determine with any degree of certainty what type of program (to treat and rehabilitate persons who use drugs and narcotics illicitly) could be most effectively developed and administered by the state...

Of course, this does not mean that the State Legislature has been sitting on its hands in the field of legislation controlling drugs and narcotics use. In fact, no less than a dozen laws concerning drugs and narcotics were passed by the 1968 State Legislature, ranging from clarifying criminal law sanctions against marijuana use to establishing a State Research Advisory Panel to coordinate research projects on marijuana. The language of Assembly Concurrent Resolution No. 41 <u>does</u> illustrate that the State Legislature is still shopping for a sound approach. And local public education has <u>not</u> escaped the attention of the Legislators.

During the 1967 State Legislative Session, Assemblyman Pete Wilson introduced a bill which ultimately was enacted into law as Chapter 1629. Section 1 of this law enjoined the State Department of Education to:

> undertake a study, in cooperation with the State Department of Public Health, on the subject of more effective education, including methods of instruction, relative to the physical and psychological hazards of narcotics and other harmful drugs and hallucinogenic substances, including, but not limited to, the question of the age at which instruction should begin, how often programs should be repeated, and whether programs should be taught by medical and law enforcement personnel, rather than by regular members of the faculty.

Under Mr. Wilson's bill, preliminary findings of the State Department of Education in its study must be reported to the Legislature March 15 of every year, until March 15, 1971, when the <u>final</u> report of the Department is due.

Against this backdrop, the question naturally arises:

> What has the Legislature done to control drug and narcotics usage among our children?

Basically, State legislation on drugs and narcotics may be divided into three broad areas:

1. Those laws designed to stiffen and clarify the criminal statutes aimed at apprehending and punishing illicit drug and narcotics users, distributors, and manufacturers;
2. Those laws aimed at giving school authorities more discretion in dealing with public school pupils who wrongfully use, distribute, or manufacture drugs and narcotics; and,
3. Those laws attempting to gather information about the causes of drug and narcotics usage so that sound preventive and rehabilitative programs may be formulated.

For purposes of this discussion, we will concentrate on the latter two areas; that is, the legal bases for controlling pupils who illegally use drugs and narcotics and developing preventive programs within the organizational framework of the public schools. But, before we focus on the control of pupils illicitly using drugs and narcotics, it would be worthwhile to study for a moment the kind of pupil we are attempting to control.

In a recent study by Scott C. Gray, Director of the San Diego City Schools' Guidance Department and Dr. Richmond Barbour, Assistant Superintendent, Student Services Division of the San Diego City Schools, it was concluded that:

> Drug offenses are not, in the main, committed at school or by a hoodlum element having previous police records. The problem is not acute at present below senior high school. It cannot be related to an immigrant element. It cannot be related to intellectual deficiency or to low socio-economic level. The poor scholarship shown at the time of arrest seems attributable to the narcotics involvement rather than the narcotics involvement being caused by the poor scholarship.

This study suggests that the pupils whom the public schools are attempting to control in the area of drugs and narcotics can hardly be classed as the dregs of society forever condemned to hopeless lives because of the complete absence

of potential to be successful in life. As we shall see, the State Legislature has given you broad discretion in controlling pupils who wrongfully use drugs or narcotics. This discretion must be used wisely and, in proper circumstances, with mature restraint, because your school disciplinary actions can have a profound lifetime impact on the pupils with whom you deal.

The authority of a California public school to discipline its pupils for wrongful activity with drugs or narcotics is specifically set forth in Section 10603 of the Education Code, which declares:

> The governing board of any school district may suspend or expel, and the superintendent of any school district when previously authorized by the governing board may suspend, a pupil whenever it is established to the satisfaction of the board or the superintendent, respectively, that the pupil has on school premises or elsewhere used, sold, or been in possession of narcotics or other hallucinogenic drugs or substances, or has inhaled or breathed the fumes of, or ingested, any poison classified as such by Schedule "D" in Section 4160 of the Business and Professions Code.

Let us now consider some practical questions concerning a pupil whose actions would seem to come under the provisions of this section. We will attempt to resolve the questions using the language of this section, and, where necessary, <u>other relevant</u> legal authority. The questions are:

1. <u>Must drug or narcotics offenses be committed while the pupil is under the supervision of the school?</u>

The answer is clearly "No." Section 10603 expressly authorizes suspension or expulsion from school of a pupil who has wrongfully "used, sold, or been in possession of drugs or narcotics while on school premises <u>or elsewhere</u>." In sum, the Legislature has concluded that if school authorities are of the view that continuance of an offending pupil in school would be inimical to the good order and discipline of the school, or adversely affects the education, even though the offense was committed away from the school, then the

school authorities should have the power to suspend or expel the offending pupil. It is a matter of discretion with the school authorities. The test should be: Does the continued presence of an offending pupil negatively affect the discipline or education of the school? If the answer is "Yes," it is difficult to see how the pupil can be rehabilitated within the school, at least for the short run. It is also difficult to justify the continued presence in school of the offending pupil at the expense of the education of his classmates.

2. What are the evidentiary standards which the schools may use in determining whether a pupil has wrongfully used, sold, or been in possession of proscribed narcotics or drugs?

Education Code Section 10603 authorizes expulsion or suspension "whenever it is established to the satisfaction of the (school) board or the superintendent" that a pupil has done the prohibited act relative to narcotics or drugs. This provision places any decision on the matter entirely within the discretion of school authorities. Therefore, an eye-witness account, an arrest for narcotics or drug violation, a report from a responsible person, all may be used as the basis of a suspension or expulsion, providing, of course, that the basis used was reasonable and the action taken was not tainted with malice.

3. Does the law require a formal hearing before a pupil may be suspended or expelled for a drugs or narcotics violation?

Statutory law may require a hearing in expulsion cases. Education Code Section 10608 provides for an appeal from a local school board's determination of expulsion to the County Board of Education. This statutory right of appeal has persuaded some attorneys that a local school board must offer a pupil the opportunity of a hearing in an expulsion case.

Parenthetically, the San Diego City Schools offers every pupil proposed for expulsion the opportunity of a formal hearing at which the pupil may be represented by legal counsel. The hearing is conducted by a hearing board of three experienced school administrators and an appeal may be taken to the Board of Education.

In suspension cases in below-college level schools, however, no formal hearing seems to be required by law. Most school districts throughout the United States do not offer suspended pupils a hearing. As the U.S. Court of Appeals in New York said just last year in Madera v. Board of Education of City of New York:

> Law and order in the classroom should be the responsibility of our respective educational systems. The courts should not usurp this function and turn disciplinary problems involving suspension into criminal adversary proceedings -- which they definitely are not.

Here in California, the State Supreme Court refused to hear an appeal on February 15, 1968, from a pupil in a case where the San Francisco Superior Court held that the arrest of a pupil on suspicion of throwing a fire-bomb in a school hallway was sufficient grounds for the accused pupil to be suspended from school without any kind of hearing.

4. How long may a suspension of a pupil for wrongfully using, selling, or being in possession of drugs or narcotics be?

Education Code Section 10607.5 places a general total time limit of twenty days' suspension per school year for any pupil. This total time limit may be exceeded only in four situations: (a) when a pupil is transferred to a continuation or adjustment-type school, a suspension may be for the duration of the current semester; (b) when a pupil is transferred to another regular school for adjustment purposes, ten additional days of suspension are authorized; (c) when an expulsion of the pupil is being processed and the local school board has not yet rendered its decision in the matter; or

(d) when an action against the pupil is pending in Juvenile Court and the court has not yet rendered its decision, a suspension may be for the period ending with the decision.

5. May the school records relating to the suspension from school of a pupil who has wrongfully used, sold, or been in possession of narcotics be expunged or sealed?

Section 781 of the California Welfare and Institutions Code provides for the expunging or sealing of records relating to juvenile law violators after a five-year period. When a sealing order of the Court is served on your school district, you are under a legal obligation to comply. You should gather up all school records relating to the suspension and destroy them.

6. What is the relationship of the San Diego County Juvenile Court and the schools in the disposition of cases involving pupil drug and narcotics violators?

The maintenance of good order and discipline in a high school in which there are enrolled hundreds of impressionable, volatile teenages is a complex and delicate job entrusted by California law only to specially educated, experienced, and licensed persons who are present on the high school campus all day long all year long. The judicial processes, necessarily and properly including built-in time lags, third-party advocates, away-from-the-scene objectivity, relative disregard for the dynamics of immature group reaction, technical rules of pleading and evidence, and provisions for almost endless appeals, are hopelessly inappropriate for the task of controlling school discipline. California law recognizes this simple and clear-cut fact by vesting control of discipline matters of the public schools in boards of education, and not in the juvenile courts.

While the juvenile court disposition of a case involving a particular pupil does not control the discipline or placement of that pupil in school,

both agencies are fully aware that they are dealing with the same juvenile. Therefore, close liaison characterized by mutual respect for each other's role in dealing with youth exists between the schools and the San Diego County Juvenile Court. However, notwithstanding the high esteem in which the Juvenile Court is held, under no circumstances should a school board abdicate its statutory responsibility of governing its schools and controlling the discipline of its pupils. And nobody understands or appreciates this fact better than the San Diego County Juvenile Court.

So far in our discussion, we have been concerned only with the negative aspects of pupil involvement with drugs or narcotics. That is, we have considered various legal questions which only arise <u>after</u> a pupil has been discovered illicitly using, selling, or being in possession of drugs or narcotics. The sanctions mainly involve suspension or expulsion from school or transfer of the offending pupil to a continuation school or a <u>different</u> comprehensive high school. We know that these actions clearly are <u>not</u> the entire solution to the problem of illegal narcotics and drug use by the youth of our schools.

Therefore, during the remaining time let us turn our attention to the <u>legal</u> bases for developing a sound educational program which will have as its purpose the discouragement of pupil usage of drugs and narcotics. In the words of DRUGS AND THE CALTECH STUDENT, a booklet on drugs and narcotics published by the California Institute of Technology for the use of its students:

> The Institute...is an <u>educational</u> institution and believes that it can help students grow in wisdom, maturity, and responsibility more through educational means than through punitive or disciplinary ones.

The statutory basis for the development and introduction of an educational program in the public schools about drugs and narcotics is contained in

Chapter 182, Statutes 1968. This law is officially known as the "George Miller Jr. Education Act of 1968" but is informally referred to as "SB-1." It has appropriately been described as the "Magna Carta" of local public education in that the State Legislature has indicated that it no longer intends to act as the master school board of California. Instead, the State Legislature has said, in Education Code Section 7502, which was revised by the "George Miller Jr. Education Act of 1968," that:

> The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish a common state curriculum for the public schools, but that, because of economic, geographic, physical, political and social diversity, there is a need for the development of educational programs at the local level, with the guidance of competent and experienced educators and citizens. Therefore, it is the intent of the Legislature to set broad minimum standards and guidelines for educational programs, and to encourage local districts to develop programs that will best fit the needs and interests of the pupils.

The "broad minimum standards and guidelines" for the educational program on drugs and narcotics are contained in the "George Miller Jr. Education Act of 1968" at Education Code Sections 8503, 8504, and 8505, as follows:

> a. Sec. 8503: The adopted course of study shall provide instruction at the appropriate elementary and secondary grade levels and subject areas in...health, including the effects of...narcotics, (and) drugs... upon the human body.
>
> b. Sec. 8504: Instruction upon the nature of...narcotics, (and) restricted dangerous drugs as defined in Section 11901 of the Health & Safety Code...and their effects upon the human system as determined by science shall be included in the curriculum of all elementary and secondary schools. The governing board of the district shall adopt regulations specifying the grade or grades and the course or courses in which such instruction with respect to...narcotics (and) restricted dangerous drugs as defined in Section 11901 of the Health & Safety Code...shall be included. All persons responsible for the preparation or enforcement of courses of study shall provide for instruction on the subjects of...narcotics, (and) restricted dangerous drugs as defined in Section 11901 of the Health & Safety Code...

> c. Sec. 8505: Any course of study adopted pursuant to this division shall be designed to fit the needs of the pupils for which the course of study is prescribed.

Effectively, the "George Miller Jr. Education Act of 1968" has statutorily imposed upon local school districts and county departments of education the responsibility of formulating educational programs on drug and narcotics usage. While it is true that school districts have been required by State Statute for many years to provide instruction on drugs and narcotics, there has never been in force a legislative directive that school districts innovate and experiment with creative and imaginative educational programs tailored to local needs.

In essence, the "George Miller Jr. Education Act of 1968" embodies a whole new way of thinking by the State Legislature. This new way of thinking by the lawmakers may be perhaps vividly summarized this way:

> For years, school people have asked for more discretionary power in formulating educational programs for the public schools. They claimed they were humpbacked under the burden of state educational program-mandate piled upon state educational program-mandate. They said that the State prescribed such full and detailed educational course requirements that they had no opportunity to be creative or imaginative in designing at the local level form-fitting educational programs for local needs. If only the State would back-off a bit, and give local educators room to innovate, the quality of local public education could not help but be enhanced.

Ladies and Gentlemen, the State has backed-off -- through the "George Miller Jr. Education Act of 1968." The State has not abandoned the field, as we can see by Assemblyman Pete Wilson's Bill for research on narcotics and dangerous drugs by the State Departments of Education and Health, and Assembly Bill 195 of the 1968 Regular Session of the California Legislature which is now on the Governor's desk awaiting his signature. AB-195 appropriates $40,000 to the University of California

> for purposes of designing and implementing a research program related to the effects of marijuana use...in

> all pertinent research perspectives, including, but not limited to, pharmacology, physiology, psychology, and sociology.

But the State has backed-off in the sense that no longer is the old shibboleth of "The Education Code doesn't authorize it" valid in the case of educational program development. In fact, the whole future of local public education depends on how the "George Miller Jr. Education Act of 1968" is implemented at the local level. If the challenge of the Act is not adequately met at the local level with the formulation of effective educational programs, such failure will provide the State Legislature with persuasive reasons to centralize education in our State. And this centralization could take the form of abolishing local school districts and school boards as we know them today and replacing them with one statewide school district governed by a State School Board and administered by a regionalized bureaucracy. In other words, the "George Miller Jr. Education Act of 1968" has given local public school districts all the "local control" they have been asking for over the course of many years; they are on probation and must exercise this newly found local control wisely and vigorously, or it will be taken back and lost to them forever.

There is another dimension to the problem. The Winton Act,passed in 1965 by the California Legislature, gives teacher organizations a "voice" in the formulation of educational policies in local public school districts. The teacher organizations, quite naturally, are anxious that their voices be heard. And school boards, the members of which are elected by vote of the people and whose responsibility is only to the people, have shown themselves ready to listen to whomever is capable of articulating sound educational program proposals and acting upon such proposals, regardless of how such action may seem to violate cherished notions of "going through proper channels."

Perhaps this is a new kind of healthy competition which will spur on both administrators and teachers to outdo the other in aborning creative and imaginative educational programs for our schools. Or, perhaps it signals the birth of an era of collegiality or participatory administration in the management of the public schools. Or, perhaps it signals the beginning of a good old-fashioned branigan between management and labor in the classic labor law sense. Only time will tell. Whatever it means, though, you can count on at least one fact: if the administration of a school district does not provide imaginative and vigorous leadership, the resultant vacuum will be filled, for better or for worse, by teacher organizations. And this is as true for drugs and narcotics education as it is for remedial reading.

In conclusion, the legal position of school personnel with respect to drugs and narcotics may be summed up in a few words:

> The discretionary authority given you by the State Legislature is extremely broad in pupil disciplinary actions -- and you are empowered to expel or suspend pupils from school as you see fit, providing of course that you are acting reasonably and without malice. In a more positive vein, the State Legislature, in an historic move, has formally and unequivocally recognized your professional expertise in developing sound educational programs at the local level to meet the challenges of our new era -- and one of these programs involves education about drugs and narcotics. You have all the legal authority to develop such programs that you could ever wish for. The Legislature is asking that you "do your thing." If you do not exercise that authority, or

"do your thing," it will either pass over by default to teacher organizations or will be retaken from you by the State.

That is your legal position.

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